

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND EDWARD STEELE,

Petitioner,

vs.

WARDEN, San Quentin
State Prison,

Respondent.

No. CIV S-03-0143 GEB CKD

DEATH PENALTY CASE

ORDER

On December 14, 2011, the undersigned held a telephonic status conference. Peter Giannini and Allison Claire appeared for petitioner. Eric Christoffersen appeared for respondent. The parties discussed two issues: (1) the status of finding a replacement for Mr. Giannini's co-counsel Ms. Sheard, who left the Federal Defender's Office in November; and (2) scheduling resolution of the procedural default issues remanded to this court by Judge Burrell (Dkt. No. 193).

Ms. Claire informed the court that attorney David Harshaw, who will be starting with the Federal Defender's Capital Habeas Unit on January 3, 2012, will act as petitioner's co-counsel with Mr. Giannini. The court understands that Mr. Harshaw will require some time to familiarize himself with this case. If petitioner's counsel find they are unable to meet the January

1 30, 2012 deadline for discovery motions, they shall seek an extension of time supported by
2 declarations from both attorneys.

3 Based on the parties' discussion about scheduling, and good cause appearing, the
4 court has determined it will be most efficient to delay consideration of the procedural default
5 issues remanded by Judge Burrell until after a determination on the discovery motion described
6 in the court's September 8, 2011 order. Cf., Lambrix v. Singletary, 520 U.S. 518, 525 (1997) (a
7 district court may address the merits without reaching procedural issues where the interests of
8 judicial economy are best served by doing so); Franklin v. Johnson, 290 F.3d 1223, 1232 (9th
9 Cir. 2002) ("Procedural bar issues are not infrequently more complex than the merits issues
10 presented by the appeal, so it may well make sense in some instances to proceed to the merits if
11 the result will be the same.")

12 Dated: December 15, 2011

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14 CAROLYN K. DELANEY
15 UNITED STATES MAGISTRATE JUDGE
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